

Minutes of the Board of Adjustment meeting held on Monday, March 14, 2011, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair
Rosi Haidenthaller
Roger Ishino
Preston Olsen
Ray Christensen, Senior Planner
Tim Tingey, Community & Economic Development Director
G.L. Critchfield
Citizens

Excused: Jonathan Russell, Vice-Chair

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Ms. McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Roger Ishino made a motion to approve the minutes from December 13, 2010 as written. Preston Olsen seconded the motion.

A voice vote was made. The motion passed 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1427 – JOHN & KORIN RICHINS – 1108 West Ropcke Drive – Project #11-15

John and Korin Richins and Larry Wilson were the applicants present to represent this request. Ray Christensen reviewed the location and request for a 9 ft. rear yard setback variance to construct an addition onto the back of the house which will result in a 16 ft. rear yard setback at the property addressed 1108 West Ropcke Drive. Murray City Code Section 17.100.080. D. states: "The required minimum depth for the rear yard setback shall be 25 feet in the R-1-8 zone for dwellings constructed after April 7, 1987". A review of the files shows the River Cove subdivision was recorded in 1996 and requires a 25 ft. rear yard setback for dwellings. The purpose of setback requirements is to provide for adequate open space, separation between buildings and property boundaries to meet building and fire codes and provide for access onto the property. A secondary purpose of setbacks is to protect the welfare of adjacent property owners by providing adequate space between structures and property boundaries in order to mitigate visual impacts of buildings to protect the health and safety of Murray residents. There are no special circumstances such as topography, or physical conditions that apply to this property that would prevent compliance with the standards of the ordinance. Staff finds that other properties in subdivisions approved after April 7, 1987 in general in the area and R-1-8 zone comply with the 25 ft. rear yard setback. Staff reviewed past

variance requests in this neighborhood area for rear yard setback variances and there was only one property for David Nicponski, which the record shows had received a 5 ft. rear yard setback variance. In review of the aerial photos for this subdivision it appears the properties meet the setback standards. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

Larry Wilson, 5934 South 840 West, stated he is the contractor representing the Richins for this request. Mr. Wilson stated the reason they have requested the variance is because there has been other variances granted in the area. Mr. Wilson presented a city map to the Board members showing approximately 5 variances having been granted in this area. He stated that one variance is located on Walden Ridge, two are in the Murray Oaks subdivision, and there are a couple other variances. Joyce McStotts responded that each application is viewed on its own merit and may have different circumstances. Even though there may have been some in the same general area, the Board reviews each application on its own merits.

Joyce McStotts asked the applicants how this request meets the five criteria as outlined for granting a variance. Mr. Wilson responded that a similar request has been granted in the past for other residents having large families, etc. He stated that the variance may not have been directly related to the lot, but was related more to the needs of the resident.

No comments were made by the public.

Rosi Haidenthaller commented that she personally would love it if each home could have a large family room and living area to fit their individual needs, but the Board is required to rule on variance requests based on the parameters established and current zoning regulations. She stated a resident simply wishing to have something may not be a basis for granting a variance. It is the burden of the property owner to prove a hardship in order to have a variance granted.

Roger Ishino made a motion to deny the variance as requested based on the Findings of Fact notating specifically that there are no special circumstances are attached to the property. Seconded by Rosi Haidenthaller.

Call vote recorded by Ray Christensen.

A Mr. Olsen

A Mr. Ishino

A Ms. McStotts

A Ms. Haidenthaller

Motion passed 4-0.

Mr. Olsen made a motion to approve the Findings of Fact for John & Korin Richins as written. Seconded by Rosi Haidenthaller.

A voice vote was made. The motion passed 4-0.

CASE #1428 – LINDA WILLIS – 4575 South Creekview Drive - Project #11-17

Linda Willis and Margaret Pahl were the applicants present to represent this request. Tim Tingey reviewed the location and request for a setback variance to allow for an existing detached accessory building to be attached to the main dwelling at the property addressed 4576 S. Creekview Drive. Murray City Code Section 17.100.080 (B) requires a minimum side yard width of 8 feet. The minimum total width of the two required side yards is 20 feet. The applicant is requesting a variance to the side yard setbacks to allow for connection of an existing detached accessory structure to the main residence. The applicant proposes a setback of 2 feet from the west property line with a total setback width of 10 feet 4 inches for the two side yards. County records indicate the existing home was constructed in 1959. The applicant has indicated that detached accessory building was constructed in the mid 1990's. The applicant has not provided any evidence of a building permit for the accessory structure. The property was subsequently annexed into Murray City in 2000. The accessory building is currently being used for a property management business, and the applicant has applied for a business license for a home occupation. The ordinance prohibits the use of accessory structures for home occupations. The ordinance allows for accessory structures within one foot of the property line provided building code standards related to building openings and construction materials are met. The need for the variance arises from a desire to connect the building to the principal structure to allow for continued use of the accessory structure for a business. If the applicant conducted the business within the principal structure, there would not be a need to connect the buildings or to obtain a variance. The structure currently meets the minimum setback standard for an accessory building. It is the existing use of the accessory structure as a business that creates the need for the variance. The property is narrow and long and the existing home does not meet the setbacks for the R-1-8 zone. The property also has topographical constraints that impact the buildable area on the lot. Based on the proposed variance request, the special circumstances do not justify a variance. The applicant has indicated that the property right in question is buildable area. However, there is adequate area to the rear of the principal residence on the side opposite the residence to construct a reasonable addition without the need for a variance. In addition, all residential properties are prohibited from conducting businesses in accessory structures. One of the reasons for the prohibition is to minimize impacts on the neighboring properties. Since accessory structures are allowed by ordinance to be located very close to the property line, allowing for a business in the structure could potentially lead to greater impacts on adjacent properties than would arise from a home occupation located in the residence. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial.

Preston Olsen stated that it appears from the photos that other homes in the area don't meet the zoning regulations. Mr. Tingey responded that there are older homes in this area that were built under different standards in the County. Information was provided by applicant related to the county setbacks but it is unclear as to why the detached structure did not meet the standards other than there was some discrepancy in the standards that the County had in their zoning ordinance at that time. Mr. Tingey stated the Board has been given a copy of an email from a neighbor supporting this variance

request in addition to a letter entitled "To Citizens: For a Safe Single Family Zoned Neighborhood" from Eugene & Cheryl Cervenka.

Margaret Pahl, 4600 South Creekview Drive, stated she is representing the applicant for this request. Ms. Pahl stated she had decided not to show her powerpoint presentation because the Board has been shown photos of the existing accessory building and home showing a reduced setback. She stated it appears that the required setback for this neighborhood when it was developed was 3 feet. Ms. Pahl stated that her opinion is that this property's location on the cul-de-sac and its shape related to the cul-de-sac are unique and could be used as findings to support the variance because it is a property related width issue. Ms. Pahl submitted to the Board a letter from the neighboring property owner, Shawn Moore, to the west which would be most affected with this proposal. The neighbor states in the letter that he has already been affected and the building was built 17 years ago. Ms. Pahl stated that Linda Willis does not have a home occupation business license from Murray City, but the goal is to seek a home occupation business license for her business. Ms. Willis has been operating the business for 17 years. This variance is a reaction to a code enforcement case that is being brought against Ms. Willis. The business is permitted as a home occupation business, but the issue is that the home occupation business is not allowed to operate in an accessory structure and must be within the main dwelling. The way they are seeking to achieve their goal is to attach the accessory structure to the main dwelling which would require a variance in regards to the setbacks. Ms. Pahl stated that the accessory structure has been used for a home business for 17 years and has no plumbing. The employee of the business and the resident go into the main structure for their lunches and to use the restroom. She stated in essence, nothing in the neighborhood will change from how it has been for many years except the business will come into compliance through the home occupation licensing and will either be conducted in the home or will be conducted in the accessory structure. The business is a property management office use that has one employee. Ms. Pahl stated that home occupation businesses are growing in this time of economic recession and change.

Ms. Pahl stated that the neighbors expressed concern in their letter with special events occurring in the yard and indeed there have been a few special events held at the property and all of the neighbors are aware when there has been a special event. She clarified that these special events are a typical back yard party. Ms. Pahl stated that the unique shape of the property and the fact that the applicant is supporting other goals from the general plan such as providing home occupations with little or no impact to the neighborhood can support the Board in making its findings to grant the variance.

Rosi Haidenthaller commented that it appears that contractors make a lot of adjustments when developing the cul-de-sac attempting to accommodate the dwellings the best they could at that time.

Rosi Haidenthaller asked that although there is only one employee on-site, there have been concerns about the amount of traffic the home occupation business brings into the neighborhood. Ms. Pahl responded that over the years routinely people could drop off their rent checks at the home or the owner could meet with contractors at the home, but that is more likely to occur off-site. More recently with on-line banking and internet services, this business has reduced the amount of traffic. Ms. Pahl stated it is critical to have this business licensed and regulated by the city because those types of conditions

of approval can be placed on the business such as no more drop off of rent checks, etc. and could be better regulated by the city than not being licensed.

Rosi Haidenthaller asked if the home owner has explored other options of rebuilding the accessory dwelling at a different location on the property or having an addition made to the home so as to meet the zoning regulations and thus eliminating the need for a variance. Ms. Pahl responded there is a steep slope on the property that limits the ability to build elsewhere on the property but there is a little bit of flat land behind the home that the applicant could add onto the home. She stated the accessory structure was built by a licensed contractor which included the requirement that a building permit be obtain, but it is unknown whether the contract actually obtained a building permit and the County cannot find any building permit. Ms. Pahl stated the adjacent neighbor indicated that the accessory structure adds to their privacy and the accessory structure has no windows on the side adjacent to the neighbor. She stated a building permit would be necessary to attach the accessory structure to the main dwelling and would also necessitate bringing the accessory structure into compliance and a one-hour firewall requirement. Ms. Pahl stated this variance request to attach the accessory structure to the main dwelling is a solution to a code enforcement issue.

Linda Willis, 4576 South Creekview Drive, stated the accessory structure has existed for over 17 years and has been used as an office building for the entire time and was constructed while in the County's jurisdiction. She stated that there are currently fewer cars parked at this home than when she was raising her family at the home. She stated that while she was raising her family, there were at least 4 cars parked at any given time, plus a trailer. She stated that as she has improved her business methods and there is less traffic in the last two years because of on-line banking resulting in less tenants or contractors coming to the property. She stated that she would be willing to have a condition of approval limiting traffic. She stated the letter from Shawn Moore, neighbor to the west, indicated that having the accessory dwelling unit is an advantage to him by providing more privacy and attaching the accessory structure would also increase that privacy. She stated the photos from Ms. Pahl show unique circumstances with the property in that there is only about 25 feet from the back of the home to the change in grade which is a big change in grade even though the property is a half acre lot. The lot is also very narrow at the front. She stated if she is required to move the business operations into the dwelling, she will need to keep the accessory structure for file storage. Ms. Willis stated there are four homes located to the east and west of her home that have 3 foot setbacks or less.

Gene Cervenka, 4571 & 4575 South Creek View Drive, stated he is representing himself and that he owns both properties as indicated. He stated that traffic is his concern and that the associated employee, contractor traffic and renters dropping off rent checks. He stated that UPS and FEDEX trucks frequent this home. He stated that the neighborhood has no sidewalks, or curb and people must walk in the street, including school children. He stated they have suffered through the past "events" where people park in front of their home and in his driveway, leaving debris in the street.

Rosi Haidenthaller commented that the events have been family events and not related to the business.

Mr. Cervenka stated that he has witnessed as many as 4 employees coming and going to the site on a daily basis. He stated there are two vehicles that park at the home that work out of the accessory structure. He stated that the accessory structure was a non permitted structure as indicated in conversations he had with the Salt Lake County Records office and Assessors office. Mr. Cervenka presented the Board with photos showing a full size commercial bus that comes into the neighborhood on numerous nights dropping persons off and those individuals then loiter in the street and are later picked up by persons driving a vehicle. He also showed photos of contractors coming to the business. Mr. Cervenka stated that the neighbor to the west, Shawn Moore, works in Wyoming and is seldom at his home other than on occasional weekends. Mr. Cervenka stated he is opposed to this variance request based on the above concerns.

Dwight Nichols, 4575 South Creek Lane, stated that he and Linda Willis have taken care of Shaw Moore's back yard in the past. He stated he is a general contractor and has a business in Murray City and there are many home occupation businesses in Murray. He stated he visits Linda Willis from time to time and traffic is not a big deal at the Willis property.

Beau Pili, 4596 South Creekview Circle, stated he is the adjacent neighbor to Margaret Pahl. Mr. Pili stated it appears a lot of the concerns are about traffic. He stated he has lived in this neighborhood over a year and drives through this cul-de-sac to his home and he does not feel there is a traffic problem in this area and with the Willis property. Linda Willis has had this business for many years and he expressed concern for the business to be able to continue to operate even within the detached accessory structure.

Margaret Pahl stated the topography of the property at the south edge of the accessory structure's foundation is exposed because that is the location where the change in grade begins. The only section of flat property is immediately behind the home.

Roger Ishino asked Mr. Cervenka how long he has lived at his home. Mr. Cervenka responded that he has lived in his home for 30 years. He stated that he purchased the home addressed 4575 South Creekview in 1981 and the home addressed 4571 South Creekview was purchased 1997. He stated he has witnessed much traffic generated from the Linda Willis business.

Preston Olsen asked the setbacks for a detached accessory structure. Mr. Tingey responded that the detached structure as it currently exists is in compliance with the setbacks, however, if it is attached it must meet the setbacks of a dwelling which are 8 feet minimum on one side and a total of 20 feet between the two side yard setbacks. Therefore, by attaching the accessory structure, it would not meet the minimum setbacks. Mr. Tingey stated the home occupation business is allowed within the main dwelling, but cannot be in the detached structure.

Preston Olsen stated that he favors granting the variance even though staff has recommended denial. He stated that this property has peculiar circumstances and that it is difficult to build and that the literal enforcement would be an unreasonable hardship because the existing residence is already nonconforming and it doesn't seem that it will be imposing, to the more nonconforming status by attaching the accessory structure.

Rosi Haidenthaller commented that the Board should keep in mind as to why variances are granted and why they are denied. There are some unique things with this property, but the hardship has to do with the business and licensing itself is a self-imposed hardship by attaching the accessory structure. She stated the Board can't approve a variance on the basis of an economic reason or self-imposed hardship. She stated the hardship is the business. Staff's findings carefully state the fact that the business can be conducted within the main dwelling in a legal manner. The applicant is imposing the hardship upon themselves. She stated there is no documentation as to whether the accessory structure was built with or without permits and was constructed while under the county's jurisdiction. The variance goes with the property and not the property owner. The Board is desirous to keep safety as a priority and setbacks help ensure safety and privacy and this variance actually would encroach into those issues.

Joyce McStotts concurred with Ms. Haidenthaller's comments. Ms. McStotts stated that if the property were to be sold, the new neighbors may not agree with this request and that variances remain with the property and not the neighbors. Ms. McStotts stated she has also lived in this neighborhood for the past 20 years and it has turned over many times and there has been many structures built over the 20 years. She stated that setbacks are an attempt to keep structures standardized through the turn over of owners and tenants.

Rosi Haidenthaller made a motion to deny the variance as requested based on the Findings of Fact as outlined emphasizing that this request is a self-imposed hardship because it is more of a reaction to code enforcement than good planning and variances remain with the property. Seconded by Roger Ishino.

Call vote recorded by Ray Christensen.

N Mr. Olsen

A Mr. Ishino

A Ms. McStotts

A Ms. Haidenthaller

Motion passed 3-1.

Rosi Haidenthaller made a motion to approve the Findings of Fact for Linda Willis as written. Seconded by Roger Ishino.

A voice vote was made. The motion passed 4-0.

CASE #1429- DARRELL L. JOHNSON – 22 & 26 West Wilson Ave – Project #11-18

Darrell Johnson was the applicant present to represent this request. Ray Christensen reviewed the location and request for approval for an expansion of a nonconforming use regarding constructing additions onto two dwellings on one lot. The existing dwellings are nonconforming regarding two dwellings on one lot, the separate lots area requirements, and setback requirements relating to front and side yards setbacks at the property addressed 22 and 26 West Wilson Avenue. Murray City Code Section 17.52.040. Outlines the requirements for expansion of nonconforming structures and states the following: (A) "A building or structure occupied by a nonconforming use and a

building or structure nonconforming as to height, area, or yard regulations shall not be added to or enlarged in any manner or moved to another location on the lot except as provided by subsection B of this section.” (B) “A building or structure occupied by a nonconforming use or a building or structure nonconforming as to height, area, or yard regulations may be added to or enlarged or moved to a new location on the lot upon a permit authorized by the board of adjustment, which may issue; provided, that the board of adjustment, after hearing, shall find: 1. The addition to, enlargement of, or moving the building will be in harmony with one or more of the purposes of this title; 2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity or the nonconforming use or structure.” Murray City Code Section 17.100.080 A. & B. states: “The R-1-8 zone requires a dwelling to have a minimum 25 ft. front yard setback from the property line, the minimum side yard setback is 8 ft., and the two combined side yards shall not be less than 20 ft.” With review of the zoning files, records and permits, staff did not find zone lot size standards regulations or zone map or building permits for the 1927 to 1933 time period. The site plan shows the existing dwelling at 22 West has a front setback of 20 ft. and a side yard setback of 5 ft. 8 inches. The information from Salt Lake County Recorder’s office shows the dwelling at 22 West was built in 1927 and the 26 West dwelling was built in 1933. The applicant indicated the garage was built in 1958. The 26 West dwelling has an attached garage with a side yard setback of 8 ft. and total combined side yards for the two dwellings is 13 ft. 8 inches. The application narrative requests Board of Adjustment approval with a priority #1 and #2 requests to construct additions onto the two dwellings. The existing location of the house at 22 West Wilson is nonconforming regarding the current Murray City required front yard setback of 25 ft. and the side yard setback is 5 ft. 8 inches. The addition onto the back of the house at 22 West will not encroach more than the existing 5 ft. 8 inch into the side yard setback. The addition at the east side of the 26 West Wilson dwelling will not change the total side yard setbacks of the existing dwellings and the addition meets the minimum 15 ft. rear yard setback. The applicant is not proposing to reduce the existing side yard and front yard setbacks with the proposed additions. Due to the length of time the dwellings have been at this site, staff has concluded that this proposal is in harmony with the purposes of this title. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for an addition to a nonconforming use and variance and recommends approval.

Joyce McStotts stated that the additions will not be beyond the existing setbacks and are confined within the existing setbacks. Mr. Christensen responded in the affirmative.

Rosi Haidenthaller clarified that this application is not a variance per se, but is a request for an expansion onto a nonconforming structure(s) which is different than a variance request. Mr. Christensen responded in the affirmative.

Roger Ishino clarified that this request will not affect the setbacks on the side, front or rear of the structures. Mr. Christensen responded that the structures are currently nonconforming to the setbacks and the additions are within the footprint of the existing setbacks.

Joyce McStotts asked if the proposed additions will require building permits. Mr. Christensen responded in the affirmative.

Darrell Johnson, 26 West Wilson Avenue, stated he has lived in his home for the past 55 years. Mr. Johnson stated they are intending to do both of the projects, but the addition for the 22 West Wilson structure will be done at a later date whereas the addition for the 26 West Wilson structure will be done sooner.

No comments were made by the public.

Roger Ishino made a motion to grant approval for an expansion of a nonconforming structure as requested based on the Findings of Fact as written. Seconded by Preston Olsen.

Call vote recorded by Ray Christensen.

A Ms. Haidenthaller

A Ms. McStotts

A Mr. Olsen

A Mr. Ishino

Motion passed 4-0.

Preston Olsen made a motion to approve the Findings of Fact for Darrell Johnson as written. Seconded by Roger Ishino.

A voice vote was made. The motion passed 4-0.

OTHER BUSINESS – ELECTION OF OFFICERS FOR 2011

Rosi Haidenthaller nominated Preston Olsen to be the chair for 2011. Seconded by Roger Ishino. A voice vote was made. The motion passed 4-0.

Rosi Haidenthaller nominated Roger Ishino to be vice-chair for 2011. Seconded by Preston Olsen. A voice vote was made. The motion passed 4-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development